

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:10-CR-248 JCM (GWF)

Plaintiff(s),

ORDER

V.

JOSE VENEGAS-SAGASTE,

Defendant(s).

Presently before the court is defendant Jose Venegas-Sagaste's *pro se* motion to reduce sentence. (Doc. # 145). Also before the court is the federal public defender's motion to withdraw as counsel. (Doc. # 149).

On April 20, 2015, defendant filed his *pro se* motion for a sentence reduction and a motion for appointment of counsel. (Docs. # 145, 146). On April 21, 2015, pursuant to the District of Nevada’s protocol for discretionary sentence reductions, the court entered an order appointing the federal public defender as counsel to represent the defendant. (Doc. # 147).

In its order, the court directed probation to prepare a supplemental presentence report addressing whether, in the probation office's assessment, the defendant is statutorily eligible for a sentence reduction under Amendment 782. The court further ordered the federal public defender to file any appropriate motion or stipulation within 120 days. (Doc. # 147).

Under the District of Nevada's protocol for discretionary sentence reductions, if counsel for the defendant determines that the defendant is not eligible for a sentence reduction, counsel shall communicate that determination to the defendant and move to withdraw as counsel.

1 On July 23, 2015, the federal public defender filed its motion to withdraw as attorney in
2 this case. Counsel states that it has reviewed the defendant's file, including all relevant court
3 documents. Based on this review, counsel represents that it will not file any motion for a sentence
4 reduction on the defendant's behalf. Accordingly, the federal public defender now seeks to
5 withdraw as counsel. (Doc. # 149).

6 The District of Nevada's protocol for discretionary sentence reductions provides that if
7 defense counsel files a motion to withdraw, the court will review probation's supplemental PSR
8 and determine whether a response from the United States attorney's office to defendant's *pro se*
9 motion is necessary, or whether it can rule on the motion without requiring a government response.
10 If the court determines that a response from the USAO is warranted, it shall order one.

11 In the present case, the court finds that a response from the USAO is unnecessary to rule
12 on the motion. Probation has provided the court with a reduction of sentence report for this
13 defendant. Probation recommends that the court find defendant ineligible for a sentence reduction
14 pursuant to 18 U.S.C. § 3582(c)(2), Amendment 782, and U.S.S.G. § 1B1.10.

15 Pursuant to 18 U.S.C. § 3582, the court may reduce a term of imprisonment where a
16 defendant has been sentenced based on a sentencing range subsequently lowered by the United
17 States Sentencing Commission after considering the factors set forth in 18 U.S.C. § 3553(a). 18
18 U.S.C. § 3582(c)(2). Reductions in a term of imprisonment based on an amended guideline range
19 are governed by the policy statement set forth at U.S.S.G. § 1B1.10.

20 Pursuant to U.S.S.G. § 1B1.10(b)(2), the court generally may not reduce a defendant's term
21 of imprisonment to a period less than the amended guideline range. U.S.S.G. § 1B1.10(b)(2)(A).
22 The sole exception to this rule involves cases in which the defendant originally received a below-
23 guideline sentence pursuant to a government motion for substantial assistance. U.S.S.G. §
24 1B1.10(b)(2)(B).

25 Defendant's original sentence reflects the statutory mandatory minimum sentence of 120
26 months. As a result, the court finds that the defendant is not entitled to a discretionary sentence
27 reduction in this case. Defendant's motion will therefore be denied. Additionally, pursuant to the
28 protocol, the court will grant the federal public defender's motion to withdraw as counsel.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Jose Venegas-Sagaste's *pro se* motion for a sentence reduction, (doc. # 145), be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that the federal public defender's motion to withdraw as counsel, (doc. # 149), be, and the same hereby is, GRANTED.

DATED July 28, 2015.

Xenia C. Mahan
UNITED STATES DISTRICT JUDGE